

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION I

CA06-508

January 17, 2007

SHARITA BROWN

APPELLANT

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
EIGHTH DIVISION [JJN-05-1465]

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

HONORABLE WILEY BRANTON,
JR., JUDGE

AFFIRMED

This is a no-merit appeal from an order terminating the parental rights of Sharita Brown to her son, J.B., d.o.b. 6/28/05, who was taken into custody by the Arkansas Department of Human Services (ADHS) from the hospital as a result of testing positive for cocaine at birth.¹ The parental rights of the putative father, Tony Stubbs, were also terminated, but Stubbs is not a party to this appeal. Brown's attorney has filed a motion to withdraw and a no-merit brief, pursuant to *Linker-Flores v. Arkansas Department of Human Services (Linker-Flores I)*, 359 Ark. 131, 194 S.W.3d 739 (2004), and Rule 4-

¹Brown is also the mother of three other children, but none of those children are the subject of this appeal.

3(j)(1) of the Rules of the Arkansas Supreme Court and Court of Appeals. The clerk of this court notified Brown of her counsel's motion and her right to file pro se points, but Brown has not filed pro se points. We affirm the trial court's termination of Brown's parental rights, and we grant her attorney's motion to withdraw.

This case originated on June 29, 2005, when ADHS received a report that J.B., who was born on June 28, and Brown had both tested positive for crack cocaine. On July 1, ADHS exercised a seventy-two hour hold on J.B., and was granted an ex parte order of emergency custody on July 6. A probable-cause hearing was held on July 8, and the trial court found that there was probable cause to continue J.B. in the custody of ADHS but awarded Brown supervised visitation.

The adjudication hearing was held on August 16, 2005. At that hearing the ADHS assessor and family-service worker assigned to the case both testified that during her supervised visitation, Brown took J.B. and kidnapped him. J.B. was taken back into ADHS custody that same evening when Brown was found at a friend's house hiding in the backyard in an abandoned van with J.B. As a result of these actions, Brown was charged with endangerment of a minor and interference with custody, and her visitation with J.B. was terminated.

Brown testified at the adjudication hearing that she had used drugs in the past, but that it had only been a problem for about six months. She said that marijuana was her drug of choice, not cocaine, and that while she used cocaine while she was pregnant, she

did not choose to use it, although she later agreed that she did choose to use the cocaine even though she knew it could harm her child.

The trial court adjudicated J.B. dependent/neglected, finding that there was not much dispute to that issue, especially when Brown admitted that she had used cocaine during her pregnancy. The trial court also found aggravated circumstances in this case and further found that Brown was an unfit parent at that time. The trial court also took judicial notice of the 1996 ADHS case involving one of Brown's other three children, in which Brown was unable to regain custody of her daughter despite being given numerous services, and where permanent custody of that child was placed with Brown's aunt.

After the adjudication hearing, ADHS filed a motion to terminate reunification services on September 1, 2005, and a hearing on this motion was held on September 27. The trial court again took judicial notice of the 1996 ADHS case involving Brown and one of her other three children, in which permanent custody of that child was placed with a relative due to Brown's failure to comply with court orders.

Dr. Paul DeYoub, a forensic psychologist, testified that, considering her background and diagnoses of cocaine dependence, depressive disorder, and a personality disorder, the prognosis of reuniting Brown with J.B. was poor. He said that Brown's cocaine dependence cast a "great shadow" on her ability to raise J.B., and that she had not been able to raise her three older children either, which were poor predictors for her future. Dr. DeYoub also stated that Brown's "unbelievable act" of taking J.B. from

ADHS during a supervised visit in July gave him serious concerns about her mental stability and her impulsive behavior.

Brown testified at the no-reunification hearing that she was currently incarcerated for interfering with custody in connection with taking J.B. from the DHS office. She said that her drug use became a problem about a year ago; that she was willing to go into treatment; that she had plans to get housing; that she had set up rehabilitation; and that she had also set up parenting classes. She told the trial court that she anticipated receiving probation for the interference-of-custody charge. Brown also testified that while she was pregnant, she “could have did a whole lot more than cocaine” but that she had “limited the drugs” and had not taken them everyday, although she admitted that she did not know what amount of crack she could take without affecting her unborn child. Brown testified that she did not think that she currently had a crack or cocaine problem, and she did not think that she did while she was pregnant either. Brown said that she was still under the influence of drugs when she took J.B. from the ADHS office, but that she was taking some life-skills classes in jail that were helping her.

The trial court found that, even if Brown was given probation in the pending criminal case and was released from jail in October, it appeared to the trial court by clear and convincing evidence that there was little likelihood that continued efforts of reunification would be successful, and ADHS was relieved from offering further reunification services. The trial court based this decision upon the fact that Brown had demonstrated an inability to raise any of her four children; that J.B. had tested positive for

cocaine at birth; that although Brown acknowledged that she used cocaine during her pregnancy with J.B., she still did not believe she had a drug problem; that Brown had kidnapped J.B. from ADHS; that Brown had not had a place to live during the past year; and that it would take from six months to one year for Brown to receive all the treatment, counseling, and training she would need to even be able to regain custody. The trial court then set hearing dates for permanency-planning and termination hearings.

The permanency-planning hearing was held on October 25, 2005, and Brown was not present. At that hearing, the trial court determined that it was in J.B.'s best interest to change the goal of the case to termination of parental rights.

The termination hearing was held on December 20, 2005. On the day before the termination hearing, Brown, who was on probation for interfering with custody of J.B., tested positive for cocaine. Brown said that she used cocaine under certain conditions, that she was feeling "a little overly stressed," and that she had "a lot of stuff on [her] back." She admitted that she did not think that she was in any condition to raise a baby at that point. However, she also testified that she did not plan on going into rehab; that it did not matter what everyone else thought; that she knew if she was a drug addict or not; and that drugs were not the problem, that she had mental issues and drugs were the outcome. She asked the trial court to give her more time to get herself together. She said that it would not be wrong to presume that because she was unable to raise her other three children that she would also not be able to raise J.B. because the trial court was looking at past history. However, she asserted that she had an interest in raising her other three

children and that she was planning to go back and get her other children, but that she was just overloaded and had to take care of herself first. The trial court found that ADHS had proved its case for termination of parental rights by clear and convincing evidence; that it was clearly contrary to J.B.'s best interests to be returned to Brown's custody; and that Brown's parental rights were terminated.

The no-merit procedure set forth in *Anders v. California*, 386 U.S. 738 (1967), applies to cases of indigent-parent appeals from orders terminating parental rights. *Linker-Flores I, supra*. In that case, our supreme court, citing *Anders*, set forth the procedure for counsel's withdrawal:

[I]f counsel finds his case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw. That request must, however, be accompanied by a brief referring to anything in the record that might arguably support the appeal.

A copy of counsel's brief should be furnished the indigent and time allowed him to raise any points that he chooses; the court - not counsel - then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds, it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires.

On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal.

359 Ark. at 139, 194 S.W.3d at ____.

In *Camarillo-Cox v. Arkansas Department of Human Services*, 360 Ark. 340, 351-52, ____ S.W.3d ____, ____ (2005) (citations omitted), our supreme court stated the well-known standard of review in parental-termination cases:

In cases where the issue is one of termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. Parental rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. On appellate review, this court gives a high degree of deference to the trial court, which is in a far superior position to observe the parties before it.

Pursuant to Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2002), an order terminating parental rights must be based upon clear and convincing evidence. Clear and convincing evidence is that degree of proof that will produce in the factfinder a firm conviction as to the allegation sought to be established. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. In resolving the clearly erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses.

The only adverse ruling at the termination hearing was the decision to terminate Brown's parental rights. Based upon our review of the record, we hold that there was clear and convincing evidence warranting termination pursuant to Arkansas Code Annotated section 9-27-341(b)(3) (Supp. 2005) and prior case law from both this court and the supreme court, and that the trial court was not clearly erroneous in terminating Brown's parental rights.

The termination of Brown's parental rights is affirmed, and her counsel's motion to withdraw is granted.

VAUGHT and BAKER, JJ., agree.